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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,296	04/06/2001	Paul J. Cornay	5772.02	7758

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EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1723

DATE MAILED: 05/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/828,296

Applicant(s)
Cornay et al.

Examiner
Charles Cooley

Art Unit
1723



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-91 is/are pending in the application.
- 4a) Of the above, claim(s) 32-91 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4, 6-9, 11, 13, 16-19, and 21 is/are allowed.
- 6) ☒ Claim(s) 1, 5, 10, 12, 14, 15, 20, and 22-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-91 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5, 5, 1 6) ☐ Other:

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OFFICE ACTION

Election/Restriction

1. Applicant's election without traverse of Group I and Species A in Paper No. 9 is acknowledged. Claims 32-91 are thereby withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Claims 1-31 are being treated on the merits.

Information Disclosure Statement

2. Note the attached PTO-1449 forms submitted with the Information Disclosure Statements filed 27 NOV 2001, 15 JUL 2002, and 2 DEC 2002.

Drawings

3. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

Specification

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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5. The disclosure is objected to because of the following informalities:

a. Page 11, line 9: replace "breaking" with --braking--.

Appropriate correction is required.

6. The abstract is acceptable.

7. The title is acceptable.

Claim Objections

8. Claim 9 is objected to because it depends from itself. It appears claim 9 should depend from claim 8.

Correction is required.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1, 5, and 10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, and 6 of U.S. Patent No. 5,944,648. Although the conflicting claims are not identical, they are not patentably distinct from each other because pending claims 1, 5, and 10 in the instant application are embraced by the scope of patented claims 1, 3, and 6.

11. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of U.S. Patent No. 6,142,924. Although the conflicting claims are not identical, they are not patentably distinct from each other because pending claim 1 in the instant application is embraced by the scope of patented claim 6.

12. Claims 1 and 10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 15 and 16 of copending Application No. 09/707,430. Although the conflicting claims are not identical, they are not patentably distinct from each other because pending claims 1 and 10 in the instant application are embraced by the scope of claims 15 and 16 in the '430 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Claim Rejections - 35 U.S.C. § 112, second paragraph

13. Claims 12, 14, 15, 20, and 22-31 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12, line 1: the recitation of " a second motor" is confusing since no first motor has yet been recited.

Claim 15, line 2: "said conveyor screw" lacks antecedent basis.

Claim 20, line 1: "said drive shaft" lacks antecedent basis.

Claim 23, line 9: "said first and second arms" lacks antecedent basis - change to --said first and second arm assemblies--.

Claim 27, line 2: "said body member" lacks antecedent basis.

Claim 30, line 2: "said heavy material output cavity" lacks antecedent basis.

14. Each pending claim should be thoroughly reviewed such that these and any other informalities are corrected so the claims may particularly point out and distinctly

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claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

Allowable Subject Matter

15. Claims 1, 5, 10, 12, 14, 15, 20, and 22-31 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112 and if the double patenting rejection is overcome by the filing of terminal disclaimer.

16. Claims 2-4, 6-9, 11, 13, 16-19, and 21 are allowable.

17. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

The prior art of record does not teach or fairly suggest a centrifuge with the recited housing, central member, arm assembly including multiple tubes, and multiple flow paths defined by the tubes for the input mixture and separated light and heavy phases.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses centrifuges with auger discharge devices.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is (703) 308-0112.

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20. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is (703) 308-0651.



Dated: 30 April 2003

Charles Cooley
Primary Examiner
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